

Memorandum

To: PPO Subcommittee
From: Paul Woodward, Water Resources Engineer
Date: May 31, 2007
Re: Revised Interlocal Agreement w/ Omaha for the Papio Dam Site 13 Project

There is a need to update and revise the existing Papio Dam Site 13 Interlocal Agreement with the Cities of Omaha and Elkhorn due to additional project cooperation and the annexation of Elkhorn. Therefore, District staff and legal counsel have prepared the enclosed revised agreement with the City of Omaha for your review and consideration.

The following is a summary of the revisions to the agreement:

- The NRD will convey title of all public property, including the prior Metropolitan Community College property not previously included in the agreement, to Omaha. The NRD will still reserve the right to construct, operate, and maintain the dam and to store water and sediment in the reservoir.
- The NRD will agree to pay Omaha the sum of \$38,000 for their work to grade the 0.5 acre wetland mitigation area as required of the NRD under the U.S. Army Corps of Engineer's (USACE) 404 permit. This fee is based on grading estimates prepared by BCDM.
- This agreement will also incorporate revisions to the cross-easements agreement for permanent mitigation easements in favor the NRD which are required conditions of the USACE 404 permit.

In summary, the NRD would agree to pay the City of Omaha for work they completed to grade the 0.5 wetland mitigation area and transfer all the land previously acquired by the District to Omaha, while Omaha would provide permanent easements needed by the District to preserve and maintain mitigation areas required under the Dam Site 13 404 permit.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Revised Inter-Local Agreement between the District and the City of Omaha for Dam Site 13 Improvements, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Council.

REVISED

**INTERLOCAL COOPERATION ACT AGREEMENT
AMONG
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,
THE CITY OF OMAHA, NEBRASKA,
AND
~~THE CITY OF ELKHORN, NEBRASKA,~~
FOR
DAM SITE 13 IMPROVEMENTS**

THIS REVISED INTERLOCAL COOPERATION ACT AGREEMENT (hereinafter referred to as **"THIS AGREEMENT"**) is made pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, et seq., by and among the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as **"the NRD"**), ~~and the CITY OF OMAHA, NEBRASKA~~ (hereinafter referred to as **"OMAHA"**), and ~~the CITY OF ELKHORN, NEBRASKA~~ (hereinafter referred to as **"ELKHORN"**). The NRD, OMAHA and ELKHORN are hereinafter referred to collectively as **"the PARTIES."**

WHEREAS, Corps of Engineers' Papillion Creek and Tributaries Lakes Project Dam Site No. 13, proposed for a tract of land near the southwest corner of 192nd Street and ELKHORN'S newly-proposed Blondo Street, in Section 18, Township 15 North, Range 11 East of the 6th P.M. in Douglas County, Nebraska, was an integral part of the planned flood control for the Papillion Creek Watershed; and,

WHEREAS, the NRD has purchased or is purchasing several tracts of land (hereinafter referred to as **"the NRD PROJECT LAND"**) conceptually depicted in the report document entitled "Conceptual Design Re-evaluation Report –

Chappel Hill/Elkhorn Dam Site 13,” as prepared by HDR Engineering, Inc., dated September 2004 (hereinafter referred to as “the **ALTERNATIVE NO. 2 REPORT**”), a true and correct copy of which report is attached hereto as Exhibit “A” and incorporated herein by reference, at or near the location specified by the Corps of Engineers for Dam Site 13, and intends to utilize such NRD PROJECT LAND for construction, operation and maintenance of a flood control project (hereinafter referred to as “the **NRD PROJECT**”), substituting for the Corps’ Papio Dam Site 13 project; and,

WHEREAS, DIAL REALTY DEVELOPMENT CORP (hereinafter referred to as “**DIAL**”) intends to subdivide and develop Elk Ridge, a subdivision, as surveyed, platted, and recorded in Douglas County, Nebraska (hereinafter referred to as “**ELK RIDGE**”) on lands northerly of and immediately adjacent to the NRD PROJECT LAND; and intends to form a sanitary and improvement district to construct certain public improvements serving ELK RIDGE; and,

WHEREAS, the NRD PROJECT consists of a flood control structure including an embankment, auxillary spillway, principal spillway, and outlet channel as depicted in the diagram attached hereto as Exhibit “1” (hereinafter referred to as “the **DAM**”), that will be constructed, operated, maintained, repaired, replaced and regulated solely at NRD expense, and associated reservoir (hereinafter referred to as “the **RESERVOIR**”), the NRD PROJECT being more particularly described in the ALTERNATIVE NO. 2 REPORT; and,

WHEREAS, the NRD PROJECT LAND is composed of (a) a tract of land, acquired by the NRD from ZALKIN TRUST and legally described as Outlot 1 and Outlot 2 in ELK RIDGE and depicted in the legal description and diagram attached hereto collectively as Exhibit “1” and incorporated herein by reference (hereinafter referred to as “the ZALKIN TRUST ACQUISITION”); and, (b) a tract of land, acquired by the NRD from Lyman-Richey Corporation described and depicted in the legal description and diagram attached hereto collectively as

Exhibit “2” and incorporated herein by reference (hereinafter referred to as “the LYMAN-RICHEY ACQUISITION”); and, (c) a tract of land, acquired by the NRD from Metropolitan Technical Community College described and depicted in the legal description and diagram attached hereto collectively as Exhibit “3” and incorporated herein by reference (hereinafter referred to as “the METRO TECH ACQUISITION”).

WHEREAS, the CITY OF OMAHA has purchased and owns certain lands near the northwest corner of 192nd Street and West Dodge Road (State Highway 6), hereinafter referred to as “the **OMAHA PARK LANDS**”, the majority of which is southerly of and adjacent to the NRD PROJECT LAND, and intends to develop thereon certain public recreational improvements (hereinafter referred to as “the **OMAHA PARK PROJECT**”); and,

WHEREAS, the NRD PROJECT will be designed by the NRD with the DAM and a portion of the RESERVOIR being constructed on a portion of the NRD PROJECT LAND and with other portions of the RESERVOIR being constructed and maintained on a portion of the OMAHA PARK LANDS; ~~and on a portions of the campus property of the The Metropolitan Technical Community College Area (hereinafter referred to as “METRO TECH”) adjacent to the OMAHA PARK LANDS, pursuant to a permanent easement (hereinafter referred to as “the METRO TECH EASEMENT”) granted or to be granted to the NRD;~~ and (d) on other lands; and,

~~WHEREAS, title to the RESERVOIR portions of the METRO TECH campus property having a ground surface elevation below elevation 1,174.0 feet above mean sea level, referenced to the National Geodetic Vertical Datum of 1929 (hereinafter referred to as “NGVD”), have been obtained by the NRD pursuant to a deed to the NRD (hereinafter referred to as “the METRO TECH DEED”); and, a permanent easement (hereinafter referred to as “the METRO TECH EASEMENT”) has been acquired over the RESERVOIR portions of the METRO~~

~~TECH campus property having a ground surface elevation between 1,174.0 and 1,180.0 feet above mean sea level, NGVD; and,~~

WHEREAS, the PARTIES hereto desire to provide herein for the cooperative construction, operation and maintenance of those certain public parks and recreational improvements, including without limitation fishery enhancement and fishing facilities (hereinafter collectively referred to as "the **PARK FACILITIES**"), intended to be constructed in the NRD PROJECT LAND at an elevation lower than 1,180.0 feet above mean sea level, referenced to the National Geodetic Vertical Datum of 1929, thus comprehending all those improvements lying below the elevation of the top of the DAM (~~hereinafter referred to as "the **PARK FACILITIES**"~~), to be permanently operated, maintained, repaired, replaced and regulated by OMAHA ~~and ELKHORN~~, respectively, as hereinafter provided; and,

WHEREAS, the PARTIES hereto contemplate that the PARK FACILITIES shall be developed in phases, as funding becomes available to OMAHA ~~and/or ELKHORN~~, and that the initial park facilities will be limited to a boat ramp and handicapped fishing pier (hereinafter referred to as "the **PHASE I PARK FACILITIES**") and that development of such PHASE I PARK FACILITIES shall be contingent upon receipt by OMAHA of a grant from the Nebraska Games and Parks Commission in an amount sufficient to fund such PHASE I PARK FACILITIES; and,

WHEREAS, the PARTIES hereto desire that the PARK FACILITIES shall eventually, contingent upon available funding and the budgetary limitations of OMAHA ~~and/or ELKHORN~~, include, without limitation, a boat ramp, a handicapped fishing pier, and a system of bicycle/pedestrian trails (hereinafter referred to as "the **TRAILS SYSEYEM**"), one such trail in the TRAILS SYSTEM (hereinafter referred to as "the **LAKESIDE TRAIL**") to surround the RESERVOIR and the portion thereof on the NRD PROJECT LAND to be located

in the corridor between the normal pool of the RESERVOIR and the legal boundary line of the NRD PROJECT LAND and other improvements; and,

WHEREAS, the PARTIES desire to set forth the terms of their agreement for the design, construction, operation, maintenance, repair, replacement, regulation and ownership of the PARK FACILITIES, and to make other agreements to facilitate the construction, operation and maintenance of a regional park on the NRD PROJECT LAND, the OMAHA PARK LANDS, and other lands (hereinafter referred to collectively as “the **REGIONAL PARK**”).

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals and their mutual covenants, the PARTIES agree as follows:

1. **PURPOSE.** The purpose of THIS AGREEMENT is to set forth the terms under which the PARK FACILITIES, including, but not limited to, the PHASE I PARK FACILITIES and certain other features of the REGIONAL PARK will be designed, constructed, operated, maintained, repaired, replaced, regulated and owned, and to specify the rights, duties and obligations of the PARTIES in connection therewith.

2. **DUTIES OF THE PARTIES.** The design, construction, operation, maintenance, repair, replacement and regulation of the PARK FACILITIES will be undertaken without any separate entity being created, and, the duties and responsibilities of the PARTIES with respect thereto shall be as defined by THIS AGREEMENT.

3. **GENERAL BENEFIT.** The PARTIES do hereby find and agree that the PARK FACILITIES will be of general benefit to the NRD with only an incidental special benefit.

4. **THE ENGINEERS.** OMAHA and ~~ELKHORN~~ shall retain independently, or jointly, as in their sole discretion they deem necessary or

desirable and, subsequently, fully compensate at their own expense, divided in such a manner between them as in their sole discretion they determine proper and in accordance with Paragraph 13 hereinafter, engineering consultants (hereinafter referred to as “**the ENGINEERS**”) approved by the NRD (such approval to not be withheld or delayed unreasonably) to design the PARK FACILITIES and to prepare plans and specifications and contract documents for, and administer construction of, the PARK FACILITIES. Such PARK FACILITIES may be designed, developed and constructed in phases and ENGINEERS may be retained to engineer all PARK FACILITIES, or phases thereof, as OMAHA and ELKHORN, in their sole discretion, deem appropriate. OMAHA and ELKHORN may determine the timetable for design, development and construction of the PARK FACILITIES.

5. PRELIMINARY PLANS. The ENGINEERS shall prepare, in phases as OMAHA and/or ELKHORN directs, preliminary plans and specifications for PARK FACILITIES including, without limitation, the PHASE I PARK FACILITIES (hereinafter referred to as “the **PRELIMINARY PLANS**”), subject to the following:

a) The PRELIMINARY PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD, which shall be in general compliance with:

- i) The ALTERNATIVE NO. 2 REPORT;
- ii) Applicable Nebraska state and federal statutes, rules and regulations.

b) The PRELIMINARY PLANS for the TRAILS SYSTEM shall specify that such trails shall be constructed of concrete surfacing not less than 10 feet in width and 6 inches in thickness that shall be designed in accordance with The American Association of State Highway and

Transportation Officials' "1999 AASHTO Guide for the Development of Bicycle Facilities."

c) The PRELIMINARY PLANS shall incorporate any plans for landscaping on the NRD PROJECT LAND which the NRD develops and provides at its cost to OMAHA ~~or ELKHORN~~.

d) The PRELIMINARY PLANS shall incorporate any plans for channel, wetland and riparian mitigation to be accomplished on OMAHA PARK LANDS which the NRD develops and provides at its cost to OMAHA ~~or ELKHORN~~.

e) The PRELIMINARY PLANS shall include plans for a boat ramp and handicapped fishing pier on the NRD PROJECT LAND.

6. APPROVAL OF PRELIMINARY PLANS. Upon the ENGINEERS' completion of each of the phases of the PRELIMINARY PLANS, and after approval of the same by OMAHA ~~and ELKHORN~~, each of the phases of the PRELIMINARY PLANS shall be submitted to the NRD for its written approvals, such approval to be provided to OMAHA ~~and ELKHORN~~ at the NRD'S sole cost and expense. The NRD shall have 30 days to review each phase of the PRELIMINARY PLANS and to approve or disapprove the same in writing or suggest amendments thereto.

7. PREPARATION OF FINAL PLANS FOR PROJECT. Upon receipt by OMAHA ~~and ELKHORN~~ of the NRD'S written approval of each of the phases of the PRELIMINARY PLANS, OMAHA ~~and ELKHORN~~ shall direct the ENGINEERS to prepare final plans and specifications for each phase of the PARK FACILITIES, (hereinafter referred to collectively as "the FINAL PLANS").

8. APPROVAL OF FINAL PLANS FOR PROJECT. Upon the ENGINEERS' completion of each phase of the FINAL PLANS and approval of the same by OMAHA ~~and ELKHORN~~, each phase of the FINAL PLANS shall be

submitted to the NRD for its written approval. The NRD shall have a period of 30 days to review each phase of the FINAL PLANS and to approve or disapprove the same in writing or suggest amendments thereto, and shall have an additional period of 30 days to review and approve subsequent amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

9. **THE PROJECT CONTRACTOR.** OMAHA and ~~ELKHORN~~ shall retain, individually or jointly, one or more, as in their sole discretion is deemed appropriate, general contractors (hereinafter referred to as “the **CONTRACTORS**”) approved by the NRD (such approval to not be withheld or delayed unreasonably), to construct one or more phases of the PARK FACILITIES, provided that OMAHA and ~~ELKHORN’s~~ ELKHORN’S obligation to retain **CONTRACTORS** for the PHASE I PARK FACILITIES shall be contingent upon receipt by OMAHA of a grant from the Nebraska Games and Parks Commission in an amount sufficient to fund such PHASE I PARK FACILITIES and further provided that OMAHA and ~~ELKHORN’s~~ ELKHORN’S obligation to retain **CONTRACTORS** for subsequent phases of PARK FACILITIES shall be contingent upon funding being available to OMAHA and/or ~~ELKHORN~~, respectively.

10. **CONSTRUCTION CONTRACT.** OMAHA and/or ~~ELKHORN~~ shall deliver to the NRD for its approval (such approval to not be withheld or delayed unreasonably) copies of any proposed contracts between OMAHA and/or ~~ELKHORN~~, on the one hand, and the **CONTRACTORS**, on the other hand, for construction of the PARK FACILITIES, including, without limitation, the proposed schedules of all materials and labor compensation rates OMAHA and/or ~~ELKHORN~~ propose to pay to the **CONTRACTORS** for construction of the PARK FACILITIES (such contract, together with the FINAL PLANS, hereinafter being referred to collectively as “the **CONSTRUCTION CONTRACTS**”). The NRD shall have a period of 30 days to review the **CONSTRUCTION CONTRACTS** for any impacts to the NRD PROJECT and to approve or disapprove the same in

writing or suggest amendments thereto, and shall have an additional period of 30 days to review and approve subsequent amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

11. **CONSTRUCTION OF PARK FACILITIES.** Within 30 days after the NRD'S approval of each of the CONSTRUCTION CONTRACTS—or at such other time as the PARTIES agree in writing, whichever is later, OMAHA and/or ELKHORN—will sign the CONSTRUCTION CONTRACTS for construction of the phases of the PARK FACILITIES, which shall be constructed in conformance with the CONSTRUCTION CONTRACTS, including the FINAL PLANS approved by the NRD.

12. **CONTRACTOR'S WARRANTIES.** OMAHA and ELKHORN shall enforce all bonds and warranties given by the CONTRACTORS and their subcontractors in the CONSTRUCTION CONTRACTS. Such enforcement obligation will be borne as between OMAHA and ELKHORN by the party with whom the CONTRACTOR has contracted.

13. **PAYMENT OF COSTS.** Except as otherwise provided in THIS AGREEMENT, OMAHA and ELKHORN shall pay all the costs of design and construction of the PARK FACILITIES, provided that neither ELKHORN nor OMAHA shall not have any obligation hereunder for payment of PHASE I PARK FACILITIES costs if a grant from the Nebraska Games and Parks Commission in an amount sufficient to fund the PHASE I PARK FACILITIES is not received by OMAHA, and provided that any obligation of OMAHA or ELKHORN for other PARK FACILITIES is contingent upon available funding and the budgetary limitations of OMAHA and/or ELKHORN, and further provided that neither ELKHORN nor OMAHA shall not be required to bear the cost of PARK FACILITIES which are not located on property it owns or on property within its zoning jurisdiction. The NRD shall pay to OMAHA the sum of Thirty-Eight

Thousand Dollars (\$38,000.00) in reimbursement of costs paid by OMAHA for the grading of a portion of the PROJECT LANDS at the NRD'S request for the NRD'S wetlands mitigation site.

14. CONSTRUCTION OBSERVATION. OMAHA and/or ~~ELKHORN~~ will provide for engineering observation and administration of construction of the PARK FACILITIES at the sole cost and expense of OMAHA and/or ~~ELKHORN~~, divided in accordance with Paragraph 13 hereinabove, and the NRD shall be given the opportunity to fully observe such construction at all reasonable hours and contemporaneously receive from OMAHA and/or ~~ELKHORN~~ copies of all written communications between or issued by OMAHA or ~~ELKHORN~~ and/or the ENGINEERS and/or the CONTRACTORS pertaining to such construction, including but not limited to statements by the ENGINEERS as to percentage of completion and substantial completion.

15. LAND TRANSFERS. Within a reasonable time after the NRD'S acquisition of all of the parcels of land comprising the PROJECT LAND, the NRD and OMAHA shall execute in counterparts and deliver to each of the PARTIES a CROSS-EASEMENTS AGREEMENT in the form as attached hereto and incorporated herein by reference as Exhibit "B" or in such other form as may be determined by agreement of the PARTIES.

16. PERMITS. The NRD shall have the responsibility to obtain all other permits and rights-of-way, including without limitation, zoning and subdivision approvals, licenses, easements, water rights, and permits or consents from the Corps of Engineers or other federal, state or local agencies, as may be required or convenient for construction, and for permanent operation and maintenance of the NRD PROJECT. OMAHA and/or ~~ELKHORN~~ shall have the responsibility to obtain all other permits and rights-of-way, including without limitation, zoning and subdivision approvals, licenses, easements, water rights, and permits or consents from the Corps of Engineers or other federal, state or

local agencies, as may be required or convenient for construction, and for permanent operation, and maintenance of the PARK FACILITIES, provided that as between OMAHA and ELKHORN, each shall have responsibility for obtaining such permits, approvals, licenses, easements, rights and consents for the PARK FACILITIES on the property its owns or on property within its zoning jurisdiction.

17. OPERATION AND MAINTENANCE. After completion of construction of the NRD PROJECT, the NRD, at its sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the DAM; and, OMAHA and ELKHORN, at their sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the portions of the RESERVOIR located on the respective lands conveyed to them in accordance with paragraph 20 of this AGREEMENT. After completion of construction of the PARK FACILITIES, and after OMAHA'S and/or ELKHORN'S acceptance of the same from the CONTRACTORS, OMAHA and ELKHORN, at their sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the PARK FACILITIES provided that as between OMAHA and ELKHORN, each shall have responsibility for the operation, maintenance, repair, replacement and regulation, and cost and expense thereof, of the PARK FACILITIES on the property its owns ~~or on property within its zoning jurisdiction.~~

18. INDEMNIFICATIONS. OMAHA shall defend, indemnify, and hold the NRD and ELKHORN harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from OMAHA'S negligence in the operation, maintenance, repair, replacement, or regulation of the PARK FACILITIES, except such personal injuries or property damages as may be caused by the sole negligence of the NRD ~~or ELKHORN.~~ ELKHORN,

~~shall defend, indemnify, and hold the NRD and OMAHA harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from ELKHORN'S negligence in the operation, maintenance, repair, replacement, or regulation of the PARK FACILITIES, except such personal injuries or property damages as may be caused by the sole negligence of the NRD or OMAHA.~~ The NRD shall defend, indemnify, and hold the other PARTIES OMAHA harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the NRD's operation, maintenance, repair, replacement, or regulation of the NRD PROJECT.

19. PLAN APPROVALS. Reviews, disapprovals or approvals of the PRELIMINARY PLANS or FINAL PLANS by the NRD ~~or ELKHORN~~ shall not, for any purpose, be construed as professional engineering advice or direction, or as participation by the NRD ~~or ELKHORN~~ in OMAHA'S design processes, nor result in liability on the part of NRD ~~or ELKHORN~~ for any negligence or contributory negligence in the design or construction of the PARK FACILITIES. ~~Reviews, disapprovals or approvals of the PRELIMINARY PLANS or FINAL PLANS by the NRD or OMAHA shall not, for any purpose, be construed as professional engineering advice or direction, or as participation by the NRD or OMAHA in ELKHORN'S design processes, nor result in liability on the part of NRD or OMAHA for any negligence or contributory negligence in the design or construction of the PARK FACILITIES.~~

20. POST-CONSTRUCTION GRANTS AND CONVEYANCES. Upon the final completion of construction of the NRD PROJECT the NRD shall convey the NRD PROJECT LAND, and the portions of the campus property of METRO TECH conveyed to the NRD in the METRO TECH DEED, as follows:

- a) The NRD shall convey to OMAHA:

i) The portions of the NRD PROJECT LAND referred to as "Parcel 3" and "Parcel 2" in the written legal description attached hereto as Exhibit "2" and incorporated herein by reference, the METRO TECH ACQUISITION described and depicted in the legal description and diagram attached hereto collectively as Exhibit "3", along with Outlot 1 and Outlot 2 in ELK RIDGE, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska and along with the portion of Outlot 2 in ELK RIDGE that is referred to as "Part B" of said Outlot 2 in the written legal description attached hereto as Exhibit "1" and incorporated herein by reference; provided that such conveyance shall be subject to a permanent easement in the form as attached hereto as Exhibit "3C" and incorporated herein by reference, granting to METRO TECH the permanent right to use, for emergency public ingress and egress to and from METRO TECH'S Elkhorn campus property, a corridor of land not less than 30 feet in width over and across the portion of the NRD PROJECT LAND described in the legal description incorporated as Exhibit "A1" to Exhibit "3C" hereto, such easement to be granted subject to and on condition that none of the surface area of such corridor will be lower than 1,170.0 feet above mean sea level (referenced to the National Geodetic Vertical Datum of 1929), NAVD, none of such surface area will be paved by METRO TECH, and such right will be used only for emergency ingress and egress and not for regular ingress or egress to METRO TECH'S Elkhorn campus or other development, and;

~~The portions of the campus property of METRO TECH conveyed to the NRD in the METRO TECH DEED.~~

b) ~~The NRD shall convey to ELKHORN the portions of the NRD PROJECT LAND referred to as "Parcel 2" in the written legal description attached hereto as Exhibit "2" along with the portion of Outlot 2 in Elk Ridge that is referred to as "Part A" of said Outlot 2 legally described in the written legal description attached hereto as Exhibit "1" and incorporated herein by reference;~~

provided however, in each such conveyance the NRD shall reserve for itself and for its successors and assigns:

i) the following permanent rights, to-wit:

(1) the right to construct, operate, maintain, repair, replace, and regulate the DAM in the NRD PROJECT LAND,

(2) the right to have unrestricted use and access over and across the NRD PROJECT LAND by any route or means and for any purpose; and,

(3) the right to flow waters and sediment upon, and inundate, all those portions of the NRD PROJECT LAND which have a ground surface elevation lower than the top of the DAM ("the MAXIMUM Flood Pool"); and,

ii) The right to enforce the following permanent restrictions, to-wit:

(1) *REGULATORY POOL STRUCTURE RESTRICTION.* OMAHA and ~~ELKHORN~~ shall not construct, maintain or permit structures, fixtures or other improvements, other than recreational trail improvements, lighting, landscaping, boat docking facilities and signage, in any areas of the NRD PROJECT LAND, within the watershed

of the DAM, having a ground surface elevation lower than 1,174.0 feet above mean sea level, NGVD.

(2) *REGULATORY POOL EXCAVATION AND FILL RESTRICTION.* OMAHA and ~~ELKHORN~~ shall not fill, nor permit filling of, any areas of the NRD PROJECT LAND, within the watershed of the DAM, having a ground surface elevation lower than 1,174.0 feet above mean sea level, NGVD, without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably.

(3) *MAXIMUM POOL EXCAVATION AND FILL RESTRICTION.* OMAHA and ~~ELKHORN~~ shall not fill, nor permit filling of, any areas of the NRD PROJECT LAND, within the watershed of the DAM, having a ground surface elevation higher than 1,174.0 feet above mean sea level and lower than 1,180.0 feet above mean sea level, NGVD, without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably.

~~b)The NRD shall assign to OMAHA and ELKHORN the following permanent and assignable easement rights granted to the NRD by paragraph 2.a. of the METRO TECH EASEMENT, to wit: the power, privilege, right and authority to construct, operate, maintain, repair, replace and regulate public recreational trail improvements in the portion~~

of the ~~METRO TECH EASEMENT AREA within the REGULATED FLOOD POOL;~~ and,

d)c) OMAHA shall execute and deliver to METRO TECH an easement in the form as attached hereto as Exhibit "4D" and incorporated herein by reference, granting to METRO TECH the permanent right to use, for emergency public ingress and egress to and from METRO TECH'S Elkhorn campus property, a corridor of land not less than 30 feet in width over and across a parcel of land (described in the legal description attached ~~hereto and incorporated as Exhibit "A1" to Exhibit "34D" hereto~~), adjacent to the Northwest corner of the South half 1/2 of the Southeast Quarter of Section 18, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, owned by OMAHA; such easement to be subject to and on condition that none of the surface area of such corridor will be lower than 1,170.0 feet above mean sea level (referenced to the National Geodetic Vertical Datum of 1929), none of such surface area will be paved by METRO TECH, and such right will be used only for emergency ingress and egress and not for regular ingress or egress to METRO TECH'S Elkhorn campus or other development.

21. RISK OF LOSS. After substantial completion of construction of the NRD PROJECT and the PARK FACILITIES, the sole risk of loss of or damage to NRD PROJECT components or to such PARK FACILITIES shall be borne by the party that has an obligation to operate and maintain such components or facilities, whether such loss or damage results from flood or other casualty whatsoever.

22. NO SEPARATE LEGAL ENTITY. No separate legal or administrative entity is created by THIS AGREEMENT.

23. **APPROVALS.** Wherever THIS AGREEMENT speaks of approval and consent by OMAHA ~~or ELKHORN~~, such approval is understood to be manifested by act of the respective Mayor or his designated representative. Wherever THIS AGREEMENT speaks of approval and consent by the NRD, such approval is understood to be manifested by act of the General Manager of the NRD.

24. **NONDISCRIMINATION.** The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability under the Americans with Disabilities Act, political or religious opinions, affiliations or national origin.

25. **CAPTIONS.** Captions used in THIS AGREEMENT are for convenience and are not used in the construction of THIS AGREEMENT.

26. **APPLICABLE LAW.** The PARTIES to THIS AGREEMENT shall conform to all existing and applicable ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

27. **MERGER.** THIS AGREEMENT shall not be merged into any other oral or written Agreement, lease or deed of any type.

28. **MODIFICATION.** THIS AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by any of the PARTIES other than those that may be expressly set forth herein. No agent, employee or other representative of any PARTY is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such respective PARTY.

29. **STRICT COMPLIANCE.** All provisions of THIS AGREEMENT and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from authorized representative.

30. **INVALID PROVISIONS.** In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of THIS AGREEMENT which shall in all respects remain a legally binding agreement with the invalid portion being deleted; provided that the validity of any such covenant, condition, or provision does not materially prejudice any of the PARTIES in its respective rights and obligations contained in the valid covenants, conditions, or provisions of THIS AGREEMENT.

31. **NON-WAIVER.** No delay or failure by any of the PARTIES to exercise any right under THIS AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by any of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under THIS AGREEMENT.

32. **FURTHER AGREEMENTS.** Each of the PARTIES will, whenever and as often as the other may request, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such further conveyances, assignments or other instruments and documents as the requesting party may believe to be necessary, expedient or proper in order to complete any and all conveyances, transfers, and assignments herein provided and to do any

and all other acts and to execute, acknowledge and deliver any other documents so requested in order to carry out the intent and purposes of THIS AGREEMENT.

33. TIME IS OF THE ESSENCE. Time is expressly declared to be of the essence of THIS AGREEMENT.

34. COUNTERPARTS. THIS AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

35. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall become effective upon its execution by all PARTIES, and shall be perpetual in its duration.

36. NOTICES. Any notice required under the terms of THIS AGREEMENT shall be deemed to have been given within forty-eight (48) hours after notice has been deposited in the United States mail; and:

a) Notices to OMAHA provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to:

Director
Parks, Recreation and Public Property Department
City of Omaha, Nebraska
1819 Farnam Street, Suite 701
Omaha, Nebraska 68183;

~~b) Notices to ELKHORN provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to:~~

~~_____ City Manager/Administrator
_____ City of Elkhorn, Nebraska
_____~~

_____Elkhorn, Nebraska 68_____;

e)b) Notices to the NRD provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

General Manager
Papio-Missouri River NRD
8901 South 154th Street
Omaha, Nebraska 68138-3621

or to such other respective address(s) as the PARTIES may designate to each other from time to time in writing.

IN WITNESS WHEREOF

THIS AGREEMENT is executed by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT on this _____ day of _____, ~~2005~~2006, pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

THIS AGREEMENT is executed by the CITY OF OMAHA, NEBRASKA on this _____ day of _____, ~~2004~~2006, pursuant to ordinance duly adopted by its City Council.

CITY OF OMAHA, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

~~THIS AGREEMENT is executed by the CITY OF ELKHORN, NEBRASKA~~
on this _____ day of _____, ~~2004~~2006, pursuant to
ordinance duly adopted by its City Council.

CITY OF ELKHORN, NEBRASKA

By _____

Mayor

ATTEST:

City Clerk

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, ~~2004~~2006,
before me, a Notary Public, personally came _____,
General Manager of the **PAPIO-MISSOURI RIVER NATURAL**
RESOURCES DISTRICT, to me personally known to be the identical person
whose name is affixed to the above and foregoing instrument, and he/she
acknowledged the same to be his/her voluntary act and deed and the voluntary
act and deed of said District.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, ~~2004~~2006, before
me, a Notary Public, personally came _____ Mayor of

the **CITY OF OMAHA, NEBRASKA** to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

STATE OF NEBRASKA _____)
_____) SS.
COUNTY OF _____)

On this _____ day of _____, 200452006, before me, a Notary Public, personally came _____ Mayor of **CITY OF ELKHORN, NEBRASKA** to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

CROSS-EASEMENTS AGREEMENT

THIS CROSS-EASEMENTS AGREEMENT (hereinafter referred to as "**THIS AGREEMENT**") is made by and between the **PAPPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "**the NRD**") and the **CITY OF OMAHA, NEBRASKA** (hereinafter referred to as "**OMAHA**"). The NRD and OMAHA are hereinafter referred to collectively as "**the PARTIES.**"

WHEREAS, the NRD has purchased several tracts of land in Section 18, Township 15 North, Range 11 East of the 6th P.M. in Douglas County, Nebraska described in the legal description attached hereto as Exhibit "A1" and incorporated herein by reference (hereinafter referred to as "**the NRD PROJECT LANDS**"), at or near the location specified by the U. S. Army Corps of Engineers for Dam Site 13 of the Papillion Creek and Tributaries Lakes Project, and intends to utilize ~~such the~~ the NRD PROJECT LAND for construction, operation and maintenance of a flood control project (hereinafter referred to as "**the NRD**

PROJECT”), substituting for the Corps’ Papio Dam Site 13 project; and,

WHEREAS, the NRD PROJECT consists of a flood control structure (hereinafter referred to as “the **DAM**”), that will be constructed, operated, maintained, repaired, replaced and regulated solely at NRD expense, and associated reservoir (hereinafter referred to as “the **RESERVOIR**”); and,

WHEREAS, OMAHA has purchased and owns certain lands near the northwest corner of 192nd Street and West Dodge Road (State Highway 6), described in the legal description attached hereto as Exhibit “**AB2**” and incorporated herein by reference, (hereinafter referred to as “the **OMAHA PARK LANDS**”;¹ and,

WHEREAS, certain public parks and recreational improvements (hereinafter collectively referred to as “the **PARK FACILITIES PROJECT**”), including, without limitation, fishery enhancement and fishing facilities, will be constructed, operated, maintained, repaired, replaced and regulated solely at OMAHA expense in the OMAHA PARK LANDS and in the NRD LANDS; and,

WHEREAS, in order to facilitate the NRD PROJECT and the ~~OMAHA PARK PROJECT, PARK FACILITIES PROJECT,~~ the PARTIES hereto desire to grant to each other certain easements, hereinafter described.

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals and mutual covenants and agreements of the PARTIES hereinafter set forth, the PARTIES hereto grant and agree as follows:

a) TEMPORARY EASEMENT OVER NRD LAND: The NRD hereby grants to OMAHA and ~~ELKHORN~~ a temporary easement over and across the ~~NRD PROJECT LAND,~~ such easement to grant to OMAHA and ~~ELKHORN~~ the temporary right to construct the PARK FACILITIES, subject to the NRD’S reserved rights to:

¹ Presumes that the Metro Tech lands and easement areas will be included in the legal description of the OMAHA

i) Enter and use the NRD ~~PROJECT LAND~~ for construction of the DAM and RESERVOIR; and,

ii) Periodically flow waters and sediment upon, and inundate, those portions of the NRD ~~PROJECT LAND~~ that have a ground surface elevation lower than the top of the DAM (such portions hereinafter being referred to collectively as "the **MAXIMUM FLOOD POOL**"),

such easement to have a duration equal to the period of time required to perform such construction.

b) TEMPORARY EASEMENT OVER OMAHA PARK LANDS: OMAHA hereby grants to the NRD a temporary easement consisting of the right of the NRD to enter the OMAHA PARK LANDS and grade the same in order to expand the volume of portions of the MAXIMUM FLOOD POOL to the extent approved by the CITY in writing, such easement to have a duration equal to the period of time required to perform such grading.

c) PERMANENT FLOWAGE EASEMENT: OMAHA hereby grants to the NRD a permanent easement, consisting of the permanent right of the NRD to periodically flow waters and sediment upon, and inundate, those portions of the OMAHA PARK LANDS which have a ground surface elevation lower than the MAXIMUM FLOOD POOL (top of the DAM).

d) RESTRICTIVE COVENANTS: OMAHA hereby grants to the NRD permanent restrictions as follows, to-wit:

i) REGULATORY POOL STRUCTURE RESTRICTION. OMAHA shall not construct, maintain or permit structures, fixtures or other improvements, other than recreational trail improvements, lighting, landscaping, boat docking facilities and signage, in any areas of the OMAHA PARK LANDS, within the watershed of the DAM, having a ground surface elevation lower than 1,174.0 feet above mean sea level, NGVD.

ii) *REGULATORY POOL EXCAVATION AND FILL RESTRICTION.* OMAHA shall not fill, nor permit filling of, any areas of the OMAHA PARK LANDS, within the watershed of the DAM, having a ground surface elevation lower than 1,174.0 feet above mean sea level, NGVD, without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably.

iii) *MAXIMUM POOL EXCAVATION AND FILL RESTRICTION.* OMAHA shall not fill, nor permit filling of, any areas of the OMAHA PARK LANDS, within the watershed of the DAM, having a ground surface elevation higher than 1,174.0 feet above mean sea level and lower than 1,180.0 feet above mean sea level, NGVD, without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably.

e) PERMANENT MITIGATION EASEMENTS: OMAHA hereby grants to the NRD ~~a~~-permanent easements consisting of the right of the NRD to enter the OMAHA PARK LANDS and use portions of the same for construction, installation, operation, maintenance, repair and replacement of trees, buffer strips and channel and wetlands mitigation for the trees, buffer strips, channels and wetlands that will be lost as a result of the NRD's construction of the DAM and the RESERVOIR, to-wit:

i) The portion(s) of the OMAHA PARK LANDS that shall be subject to the NRD'S aforesaid right to use for mitigation of lost impacted trees is/are described in the legal description attached hereto as Exhibit "E3" and incorporated herein by reference.

ii) The portion(s) of the OMAHA PARK LANDS that shall be subject to the NRD'S aforesaid right to use for mitigation of ~~lost~~impacted channels is/are described in the legal description attached hereto as Exhibit "D4" and incorporated herein by reference.

iii) The portion(s) of the OMAHA PARK LANDS that shall be subject to the NRD'S aforesaid right to use for mitigation of ~~lost~~impacted wetlands is/are described in the legal description attached hereto as Exhibit "E5" and incorporated herein by reference.

iv) The portion(s) of the OMAHA PARK LANDS that shall be subject to the NRD'S aforesaid right to use for mitigation of ~~lost~~impacted riparian channel buffer ~~strips~~ shall consist of a continuous strip around the entire perimeter of the normal pool of the RESERVOIR measuring no less than 50 feet from the edge of the pool outward.

All such mitigation easements shall also include and be subject to the following permanent restrictions that are hereby dedicated and that shall run with such respective portions of the OMAHA PARK LANDS and be binding upon the parties and their heirs, successors and assigns, to-wit:

(1) There shall be no construction or placement of structures or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent, on the land;

(2) There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other materials;

(3) There shall be no building of roads or paths for vehicular or pedestrian travel or any change in the topography of the land;

(4) There shall be no removal, destruction, or cutting of trees or plants, spraying with biocides, insecticides, or pesticides, grazing of animals, farming, tilling of soil, or other agricultural activity; however, maintenance activities are acceptable upon approval by the District Engineer of the Omaha District of the U.S. Army Corps of Engineers;

(5) There shall be no operation of all-terrain vehicles or any other type of motorized vehicle on the land; and,

(6) These restrictions may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the U.S. Army Corps of Engineers and, to be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the State of Nebraska.

Prior to entering the OMAHA PARK LANDS to construct, install, operate maintain, repair or replace any such trees, buffer strips and channel and wetland mitigation measures, the plans for such mitigation measures shall be submitted to OMAHA for its approval, such approval to not be withheld or delayed unreasonably. Such mitigation measures may include relocation and/or mitigation of impacts to the existing mitigation measures that comprise the Wetlands Mitigation Area and Buffer Zone declared in the Declaration of Wetlands Mitigation Restrictions recorded on February 18, 2005 as Instrument No. 2005019086 of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska, that the NRD has agreed to assume, operate and maintain in conjunction with the NRD'S operation and maintenance of NRD trees, buffer strips and channel and wetlands mitigation measures that the NRD will be required to construct, install, operate maintain, repair and replace to compensate for trees, buffer strips, channels and wetlands that will be lost as a result of the NRD'S construction of the DAM and RESERVOIR.

IN WITNESS WHEREOF

THIS AGREEMENT is executed by the PAPIO-MISSOURI RIVER
NATURAL RESOURCES DISTRICT on this _____ day of _____,
2005, pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

THIS AGREEMENT is executed by the CITY OF OMAHA, NEBRASKA on
this _____ day of _____, 2005, pursuant to ordinance duly
adopted by its City Council.

CITY OF OMAHA, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2005, before me, a
Notary Public, personally came Steven G. Oltmans, General Manager of the
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, to me
personally known to be the identical person whose name is affixed to the above
and foregoing instrument, and he/she acknowledged the same to be his/her
voluntary act and deed and the voluntary act and deed of said District.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2005, before me, a Notary Public, personally came Mike Fahey, Mayor of the **CITY OF OMAHA, NEBRASKA** to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

PERMANENT EASEMENT

For good and valuable consideration, the receipt of which is hereby acknowledged, **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as the "**GRANTOR**") does hereby grant to **THE METROPOLITAN COMMUNITY COLLEGE AREA**, a political subdivision of the State of Nebraska, formerly known as METROPOLITAN TECHNICAL COMMUNITY COLLEGE AREA (hereinafter referred to as "**METRO**"), and its successors and assigns, and their officers, agents and contractors, a permanent easement in, on, over and across the parcel of real property in Douglas County, Nebraska, more particularly described in the legal description attached hereto as Exhibit "1" and incorporated herein by this specific reference (hereinafter referred to as the "**EASEMENT AREA**"), subject to the following:

a) The rights hereby granted to METRO by this easement consist of the right to use the EASEMENT AREA for emergency public and vehicular ingress and egress to and from METRO's Elkhorn campus property, subject to and on condition that none of such surface area will be paved, filled or excavated by METRO or used for structural purposes, and such right of ingress and egress will be used only for emergency purposes and not for other ingresses or egresses to or from METRO'S Elkhorn campus or other development thereon, or other purposes.

b) The GRANTOR shall have the power, privilege, right and authority to periodically flow and overflow waters and sediment upon, and inundate, all portions of the EASEMENT AREA having a ground surface elevation lower than 1,180.0 feet above mean sea level, NGVD.

c) The GRANTOR covenants that, during construction of the Dam Site 13 reservoir, the surface area of the EASEMENT AREA will be graded to a uniform profile and cross-section and none of the surface area of the EASEMENT AREA will be graded by the GRANTOR to be lower than 1,170.0 feet above mean sea level, referenced to the National Geodetic Vertical Datum of 1929.

d) The easement hereby granted shall be recordable, shall be deemed to run with the land and shall be binding upon the GRANTOR and its successors and assigns.

Dated this _____ day of _____, 2006.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____

Title: _____

State of Nebraska)
) ss.
County of Douglas)

On this _____ day of _____, 2006, before me, a Notary Public, personally came _____, to me known to be _____ of the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, whose name is affixed to the above and foregoing instrument as grantor, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of such natural resources district.

WITNESS my hand and Notarial Seal the date last aforesaid.

NOTARY PUBLIC

PERMANENT EASEMENT

For good and valuable consideration, the receipt of which is hereby acknowledged, the **CITY OF OMAHA, NEBRASKA** (hereinafter referred to as the "**GRANTOR**") does hereby grant to **THE METROPOLITAN COMMUNITY COLLEGE AREA**, a political subdivision of the State of Nebraska, formerly known as **METROPOLITAN TECHNICAL COMMUNITY COLLEGE AREA** (hereinafter referred to as "**METRO**"), and its successors and assigns, and their officers, agents and contractors, a permanent easement in, on, over and across the parcel of real property in Douglas County, Nebraska, more particularly described in the legal description attached hereto as Exhibit "1" and incorporated herein by this specific reference (hereinafter referred to as the "**EASEMENT AREA**"), subject to the following:

a) The rights hereby granted to METRO by this easement consist of the right to use the EASEMENT AREA for emergency public and vehicular ingress and egress to and from METRO's Elkhorn campus property, subject to and on condition that none of such surface area will be paved, filled or excavated by METRO or used for structural purposes, and such right of ingress and egress will be used only for emergency purposes and not for other ingresses or egresses to or from METRO'S Elkhorn campus or other development thereon, or other purposes.

b) The GRANTOR, for itself and for the Papio-Missouri River Natural Resources District, reserves the power, privilege, right and authority to periodically flow and overflow waters and sediment upon, and inundate, all portions of the EASEMENT AREA having a ground surface elevation lower than 1,180.0 feet above mean sea level, NGVD.

c) The GRANTOR covenants that, during construction of the Dam Site 13 reservoir, the surface area of the EASEMENT AREA will be graded to a uniform profile and cross-section and none of the surface area of the EASEMENT AREA will be graded by the GRANTOR to be lower than 1,170.0 feet above mean sea level, referenced to the National Geodetic Vertical Datum of 1929.

d) The easement hereby granted shall be recordable, shall be deemed to run with the land and shall be binding upon the GRANTOR and its successors and assigns.

Dated this _____ day of _____, 2006.

CITY OF OMAHA, NEBRASKA

By _____

Title: _____

State of Nebraska)
) ss.
County of Douglas)

On this _____ day of _____, 2006, before me, a Notary Public, personally came _____, to me known to be _____ of the CITY OF OMAHA, NEBRASKA, whose name is affixed to the above and foregoing instrument as grantor, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of such natural resources district.

WITNESS my hand and Notarial Seal the date last aforesaid.

NOTARY PUBLIC